

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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XL SPECIALTY INSURANCE COMPANY,

Plaintiff,

v.

No. 08-CV-3821 (GEL)

JOHN D. AGOGLIA, PHILLIP R. BENNETT,  
LEO R. BREITMAN, EDWIN L. COX,  
SUKHMEET DHILLON, THOMAS H.  
DITTMER, NATHAN GANTCHER, STEPHEN  
GRADY, TONE GRANT, THOMAS HACKL,  
DAVID V. HARKINS, SCOTT L. JAECKEL,  
DENNIS A. KLEJNA, THOMAS H. LEE,  
ERIC G. LIPOFF, SANTO C. MAGGIO,  
PETER MCCARTHY, JOSEPH MURPHY,  
FRANK MUTTERER, RONALD L. O'KELLEY,  
RICHARD N. OUTRIDGE, SCOTT A.  
SCHOEN, WILLIAM M. SEXTON, GERALD  
SHERER, PHILIP SILVERMAN, AND  
ROBERT C. TROSTEN,

Defendants.  
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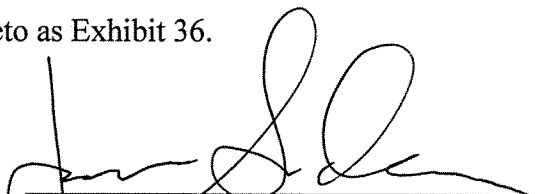
**REPLY AFFIDAVIT OF JAMES SANDNES**

State of New York                    )  
  ): ss.  
County of New York                )

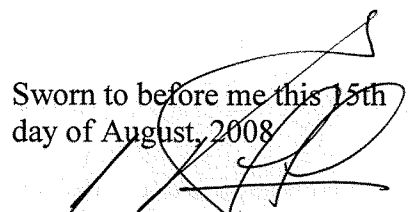
James Sandnes, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and the firm of Boundas, Skarzynski, Walsh & Black, LLC, counsel for XL Specialty Insurance Company ("XL") in this action for declaratory judgment. I make this affidavit to bring before the Court certain documents relevant to XL's motion for summary judgment.

2. On April 17, 2008, the former President of Refco Group Ltd. LLC, Tone Grant ("Grant"), was convicted, by a jury of this Court, of conspiracy, securities fraud, wire fraud, bank fraud and money laundering arising out of the same wrongdoing to which Phillip Bennett, Robert Trosten and Santo Maggio confessed. On August 7, 2008, Grant was sentenced to 10 years in prison in connection with his conviction. A true and correct copy of the relevant portion of the sentencing transcript is annexed hereto as Exhibit 36.

  
James Sandnes

Sworn to before me this 15th  
day of August, 2008

  
Notary Public

ARI R. MAGEDOFF  
Notary Public, State of New York  
No. 02MA6150477  
Qualified in New York County  
Commission Expires July 31, 20 10

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

05 Cr. 1192 (NRB)

TONE N. GRANT,

Sentence

Defendant.

-----X

New York, N.Y.  
August 7, 2008  
11:00 a.m.

Before:

HON. NAOMI REICE BUCHWALD

District Judge

APPEARANCES

MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

CHRISTOPHER L. GARCIA

NEIL M. BAROFSKY

Assistant United States Attorneys

ROGER ZUCKERMAN, ESQ.

AITAN GOELMAN, ESQ.

NORMAN ELSÉN, ESQ.

Attorneys for Defendant

SOUTHERN DISTRICT REPORTERS, P.C.  
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Sentence

(Case called)

THE CLERK: Is the government ready to proceed?

MR. GARCIA: Yes. Good morning, your Honor. On  
behalf of the government, Christopher Garcia and Neil Barofsky.  
Sitting with us at counsel table is Mary Beth Allen, our  
paralegal.

THE CLERK: Is the defense ready to proceed?

MR. ZUCKERMAN: Good morning, your Honor. We are.  
I'm Roger Zuckerman. I'm accompanied by my partner Aitan  
Goelman, by Benjamin Block, and my partner Norman Elsen. And  
of course Mr. Grant is here. We're ready to proceed.

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1 The second is that within three weeks of Mr. Bennett's  
2 arrest, Mr. Grant transferred the house to his wife, from whom  
3 he had been separated many years, and transferred an apartment  
4 to a long-time friend. These are not the acts of a guilt-free  
5 mind.

6 We have now discussed many of the important matters  
7 which weigh on the negative side of the ledger. There is no  
8 question but that Mr. Grant has many traits and accomplishments  
9 that weigh on the positive side of the ledger. These include  
10 his military service, his founding and continued support of the  
11 Music City Track Club, his other charitable contributions, and  
12 his contributions to his college, Yale, his law school,  
13 Vanderbilt, and the Marine Corps, among others, and his  
14 financial and emotional support of his wife, stepchildren, and  
15 stepgrandchildren.

16 But as we credit Mr. Grant for his life's work, we  
17 must also consider the opportunities he had and the training  
18 and knowledge those opportunities gave him. That education and  
19 his work experience taught him that what he did violated the  
20 law. Nevertheless, he made the moral choice over and over  
21 again to join with Bennett, not to extricate himself from the  
22 fraud, and to profit from the activities which he had to know  
23 were legally, ethically, and morally wrong. Regardless of  
24 whether he chose to blow the whistle or to come clean, he  
25 always had the chance to walk away.

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Sentence

1 I sentence you, Mr. Grant, with a view that Mr.  
2 Bennett was more culpable but not as disproportionately so as  
3 your lawyers would suggest given your irreplaceable role in  
4 this fraud. I also sentence you with the hope that this  
5 sentence will deter others who might think that it is excusable  
6 to not get their hands as dirty but nevertheless profit  
7 enormously from the dirty work of others.

8 Accordingly, having considered all the sentencing  
9 submissions and, as I said earlier, having read every letter  
10 submitted on Mr. Grant's behalf, I sentence Mr. Grant to a  
11 total of 10 years in custody. That breaks down as 5 years on  
12 Count One and 10 years each on Counts Two, Three, Four, and  
13 Five, all to run concurrently.

14 There is, further, a period of supervised release of 3  
15 years on all counts, to run concurrently. In light of the  
16 forfeiture, there is no fine. I assume that any restitution  
17 order will be deferred. And there is a special assessment of  
18 \$500.

19 I welcome any requests with respect to a place of  
20 confinement.

21 MR. ZUCKERMAN: I'm sorry?

22 THE COURT: I said I welcome any suggestions that you  
23 have with respect to a place of confinement.

24 MR. ZUCKERMAN: I have none today, your Honor. I  
25 would ask if the Court would permit a self-surrender of the

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Sentence

1 defendant.

2 THE COURT: I don't have any problem with that. By  
3 the way, something I don't know, what are Mr. Grant's bail  
4 conditions?

5 MR. ZUCKERMAN: He is on a \$10 million bond co-signed  
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